

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by Representative Robert H. Miller at _____
Chairperson

1:30 a.m./p.m. on February 26, 1985 in room 526S of the Capitol.

All members were present except:

Representatives Ramirez, Roenbaugh, Long, Sprague, Peterson, Brady, Gjerstad, Grotetiel, Hensley, and Roy - E

Committee staff present:

Lynda Hutfles, Secretary
Mary Torrence, Revisor's Office
Russ Mills, Research

Conferees appearing before the committee:

Donna Bolek, Kansans for Drug Free Driving
Bridget Hayes, Kansas Coalition for Drug Free Driving
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association
Bill Edds, Department of Revenue
Chris Edmonds, Tavern League of Kansas
Elizabeth Taylor, Alcohol & Drug Program
Charles Hamm, Department of Health & Environment
Mike Glover, Lawrence
Reverend Taylor, Kansans for Life at its Best
Dr. Tim Rohrig, Kansas Bureau of Investigation
Bill Larzalere, Overland Park

The meeting was called to order by Chairman Miller. He announced that SCR 1605 (liquor by the drink) public hearings will be Tuesday, March 5.

Representative Aylward made a motion, seconded by Representative Eckert, to approve the minutes of the February 25 meeting. The motion carried.

SB127 - Restriction of driver's license after 2nd conviction of DUI

SB129 - Restriction, suspension or revocation of driver's license as condition of DUI diversion

HB2201- Law enforcement officers authorized to suspend driver's license or permit of certain persons driving under the influence of alcohol or drugs

HB2268- State laboratory analysis of alcohol in defendant's blood in driving while intoxicated cases constitutes prima facie evidence of percentage of alcohol in defendant's blood

HB2298- Driving under the influence of alcohol, conclusive evidence

HB2299- Driving a motor vehicle when impaired by alcohol

HB2312- Tests for blood alcohol and drugs in urine upon arrest for certain traffic offenses

HB2406- Amount of fine in DUI diversions

Representative VanCrum distributed the sub-committee report along with an amendment which combined all the DUI bills. See attachments A & B. He explained a recommendation that was suggested by the Department of Revenue which needed to be submitted as a committee bill.

Representative Charlton made a motion, seconded by Representative Roe, to introduce a committee bill concerning suspension proceedings as recommended by the Department of Revenue as a committee bill. The motion carried.

Donna Bolek, Kansas Coalition for Drug Free Driving, gave testimony supporting the sub-committee recommendations. See attachment C.

Bridget Hayes, Kansas Coalition for Drug-Free Driving, gave testimony in support of toughening the DUI laws and gave their full support to the sub-committee recommendations. See attachment D.

Gene Johnson, Kansas Community Alcohol Safety Project Coordinators Association,

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room 526S, Statehouse, at 1:30 a.m./p.m. on February 26, 1985

gave testimony in support of the subcommittee recommendations. Mr. Johnson suggested that one condition be added to the restrictions on the diversions on p. 10 and p. 33 of the amendment which adds a Condition 5 - "if a person refuses to submit to a test of blood, breath, urine, or other bodily substance to determine the alcohol or drug concentration thereof." See attachment E.

Bill Edds, Department of Revenue, expressed concerns they had on three minor issues in the subcommittee amendment. He told the committee these would be submitted in writing before committee discussion on Wednesday.

Chris Edmonds, Tavern League of Kansas, gave testimony in support of the subcommittee recommendations and told the committee the Leagues' number one priority is to promote responsible decisions with regard to alcohol consumption and use in the State of Kansas. See attachment F.

Elizabeth Taylor, Kansas Association of Alcohol/Drug Projects Directors, gave testimony in support of the subcommittee recommendations.

Charles Hamm, Department of Health & Environment, gave testimony in support of HB2268 which would permit prompt resolution of routine cases in which technical testimony by the analytical chemist is not required. See attachment G. Mr. Hamm introduced Dr. Roger Carlson who was present to answer questions.

Mike Glover, City prosecutor in Lawrence, gave testimony in support of the subcommittee recommendations. Mr. Glover told the committee of some of the experiences he has had with the diversion program. The city of Lawrence has a realistic tough diversion program. Every diversion agreement in Lawrence has had a restriction on the driver's license. Mr. Glover related there is a problem with the law which states that a penalty is to be paid within 90 days. There is nothing that says what will happen on the 91st day. The community service limit is the same - there is nothing to say what happens if the offender doesn't complete his community service in the designated amount of time. Some teeth need to be put into this and either don't impose the penalty or find the offender in indirect contempt of court if he has not paid his fine or completed his community service in the designated amount of time. Mr. Glover discussed second DUI convictions. He told the committee the penalties are not stiff enough for second time offenders and often times there is no suspension or restriction of the driver's license. He stated that under no circumstances should a second time offender be able to avoid a minimum 90 day suspension of the driver's license.

With regard to the penalty of spending five days in jail for a DUI, the bill should include that this be five consecutive days. The offender should not be able to set up his own jailtime at his own convenience.

Mr. Glover discussed a court case 234 KS 443 - OSABA which needs to be reversed. He told of experiences where one could be arrested for a DUI one night, then go out and drink & drive and get picked up again and only the first DUI is going to be prosecuted because he has not yet been warned about getting a 2nd DUI. He also thought the fine was too cheap and needed to be raised.

Reverend Richard Taylor, Kansans for Life at its Best, gave testimony in support of the subcommittee recommendations. This movement is in the right direction.

Dr. Tim Rohrig, Kansas Bureau of Investigation toxicologist, gave testimony in support of the subcommittee recommendations and the addition of drugs to the bill. See attachment H. He stated that medical personnel should be present when collecting blood samples, but it was not necessary for taking a urine sample.

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Bill Larzalere, Overland Park, supported the subcommittee recommendations and stated that the elimination of the word "chemical" in HB2312 was a good move. He also stated that medical personnel did not need to be present when collecting urine samples.

The Chairman asked the committee to draft their amendments to the subcommittee draft so that everyone would be working from the same piece of legislation.

The meeting was adjourned.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE: 2-26-85

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
Jim Shurch	2200 W. 25th St Lawrence, Ks.	KCSBP
Bill Lanzetta	1712 W. 15th Lawrence, Ks.	City of Overland Park
Dr. Roger Carlson	740 Forbes	Kansas Dept. Health & Env.
Bill JACOBS	TOPEKA	KANSAS HIGHWAY PATROL
St. What	TOPEKA	KHP
Michael Flyzik	Topoka	SRS/ADAS
Rubert Jaylor	Topoka	Life or Best
Quellen Susbill	Topoka	
Janet Kederkema	Topoka	
Jim Murphy	Topoka	Governor's Office
Bill Eds	"	REVENUE
Tom Hatter	"	"
Denise Everhart	Topoka	Gov. Office
Mary Rice	Topoka	Intern - AG's Office
Long Braker	"	"
John W Smith	Topoka	Dept of Revenue
Elizabeth L. Jaylor	"	Calvin G. Bluff Drug Prog Director
Ina Beal	Lawrence	Ks. NSAP
Bridget Hayes	Wichita	KS Coalition for Drug-Free Driving
Cindy Allison	Bellevue, Kan	Ks Coalition for Drug-Free Driving
Anna Balok	Box 195 Riley Kansas	Ks. Coalition for Drug-Free Driving
Kim Dugger	2405 Wisconsin	KANSAS CAPITAL MADD
Dr. Tim Rohrig	Topoka	KBI
Mr. Jim Green	"	KBI
CARL T Ratner	Wichita	KRLPA
CHRIS EDWARDS	Topoka	TLOK

MEMORANDUM

To: Federal and State Affairs Committee

From: Representative Bob Vancrum

Re: Subcommittee report on bill drafts concerning D.U.I and related matters

Date: February 26, 1985

The subcommittee was assigned responsibility to review S.B. 127 and 129 as passed by the Senate with the liquor by the drink package, and also to review the following house bills to determine if any or all such bills should be incorporated: H.B. 2201, 2268, 2298, 2299, 2312 and 2406. The subcommittee met five times and made a number of policy decisions concerning this legislation, which have been incorporated in the bill draft I am presenting today.

In assisting the subcommittee in understanding this bill we received testimony from John Myers from the Governor's Office; Jeff Southard of the Attorney General's Office; Marjorie VanBuren on behalf of the Supreme Court; Tom Hatton and Bill Edds, Department of Revenue; Jim Clark of the District Attorney's Office; Scott Lambers from the City of Overland Park concerning a chemical test for driving under the influence of drugs; Gene Johnson of the Community Alcohol Safety Action Program in Topeka. We also heard testimony from Kim Dugger of Kansas Citizens Against Drunk Drivers; Phyllis Thompson, who provided written testimony on behalf of the Coalition for Drug Free Driving; and Donna Bolek, whose daughter was killed by a drunk driver. Copies of written testimony submitted to the subcommittee are attached.

POLICY DECISIONS

In reaching decisions concerning the various D.U.I. bills, the committee first decided to work as many of the concepts as possible into S.B. 127. The subcommittee then reached the following policy decisions:

(1) The subcommittee agreed that it should be a crime per se to drive with a breath or blood alcohol concentration of .10 or more. The subcommittee adopted the policy incorporated in H.B. 2201, but decided that the language needed to be clarified. (pp. 11-12)

(2) The subcommittee decided against creating a new crime of driving while impaired, rejecting the concept of H.B. 2299. At least two conferees testified that creation of a lesser included

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attach A

offense of driving while impaired at a blood level of .07 would in fact make it more difficult to get convictions for D.U.I.

(3) The subcommittee next turned to the issue of a mandatory license suspension on the first D.U.I. conviction. The subcommittee decided to require a one year suspension and provide that the judge would have discretion to restrict the driver's license after 30 days. This is an expansion of S.B. 127 but possibly a restriction of H.B. 2201. (pp. 12-13)

With regard to the second conviction, the subcommittee similarly decided to mandate a one-year suspension, but left the court the discretion to restrict the license after 120 days. (pp. 13-14)

These provisions allow the court to restrict the driver's license beyond completion of the treatment program such as provided in S.B. 127, but in a different way.

(4) Concerning municipal D.U.I. ordinances, the subcommittee determined to mandate that all city ordinances must conform to state statute as to the minimum period of suspension, restriction or revocation, thereby adopting the approach of H.B. 2201 in this regard. (p. 17)

(5) With regard to diversion, the subcommittee decided to prohibit diversion if the test showed a blood alcohol concentration of .15 or more where an injury accident has resulted. (pp. 19, 33)

The subcommittee also authorized restriction, suspension or revocation of a license by a D.U.I. diversion agreement, which was the principle of S.B. 129. There was testimony, however, that prosecutors currently have authority to do that. (pp. 21-23, 34-36)

(6) The subcommittee provided for the fine under a diversion agreement to be the same as on the first D.U.I. conviction, adopting the principles of H.B. 2406. (pp. 21, 34)

(7) The subcommittee reviewed procedures for testing blood alcohol and accepted language proposed by the Department of Revenue referring to alcohol concentration rather than alcohol content and allowing its measurement from samples taken within two hours of the time the person operated the vehicle. (p. 12)

(8) The subcommittee adopted a provision requiring prompt administrative suspension of a license for six months for refusal to take a blood alcohol test but did not adopt such a procedure for testing .10 alcohol concentration. This is a modification of H. 2201's suspension provision. (p. 7)

(9) The subcommittee adopted the suggestion of some law enforcement officers that consent to a drug test should be implied as conditions of driving in this state and therefore incorporated the provisions of H.B. 2312 into the bill draft. (pp. 3-4, 10-11)

(10) The subcommittee adopted in substance language suggested by the Department of Revenue concerning sufficient cause to sustain the suspension and wording to be used advising the driver of the driver's rights. (pp. 5-6, 9)

(11) The subcommittee adopted a proposal by the Department of Revenue, based on Minnesota law, limiting liability of law enforcement for damage to vehicles which are under their custody because the driver was picked up for D.U.I. (p. 9)

(12) The subcommittee adopted the substance of H.B. 2268 concerning the use of a chemist's sworn certificate in lieu of actual appearance in court concerning the testing. (p. 11)

(13) The subcommittee recommends a mandatory 90-day jail term for D.U.I. committed while one's license is suspended or revoked for a previous D.U.I. conviction. (p. 1)

BILL DRAFT

Having made all of our policy decisions, we went about the business of determining what language changes were needed to adopt for policy decisions. Attached you will find a proposed draft reflecting these decisions.

ADDITIONAL ISSUES

During the subcommittee inquiry concerning suspension proceedings, the Department of Revenue called our attention to a number of administrative problems they are having concerning license suspensions. We agreed to recommend to the committee introduction of an additional bill to address these concerns. Since this legislation relates to suspensions of all kinds of offenses and not just D.U.I., it is our recommendation that the issues be kept separate and that a committee hearing be held at an early time concerning this matter.

Section 1. K.S.A. 1984 Supp. 8-262 is hereby amended to read as follows: 8-262. (a) (1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked shall be guilty of a class B misdemeanor on the first conviction, a class A misdemeanor on the second conviction and for third and subsequent convictions shall be guilty of a class E felony.

(2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257 and amendments thereto, to the return of such person's driver's license or was, at the time of arrest, eligible under K.S.A. 8-256 and amendments thereto, to apply for a new license to operate a motor vehicle.

(3) Except as otherwise provided by subsection (a)(4), every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least \$100 and upon a second or subsequent conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) Any person convicted of violating this section shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment if: (A) The violation was committed while the person's privilege to drive was suspended or revoked for a violation of K.S.A. 8-1567 and amendments thereto or under a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by that statute; and (B) the person is or has been also convicted of a violation of K.S.A. 8-1567 and amendments thereto or of a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by that statute, committed while the person's privilege to drive was so suspended or revoked.

(b) The division upon receiving a record of the conviction of any person under this section or any ordinance of any city or

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Attach B

a law of another state which is in substantial conformity with this section, upon a charge of driving a vehicle while the license of such person is suspended for a specifically designated period, shall extend the period of such suspension for an additional like period, and if the conviction is upon a charge of driving while a license is revoked the division shall not issue a new license for an additional period of six months from and after the date such person would otherwise have been entitled to apply for a new license.

Sec. 2. K.S.A. 8-285 is hereby amended to read as follows:
8-285. Except as otherwise provided in this section, as used in this act, the words and phrases defined in K.S.A. 8-234a and amendments thereto shall have the meanings ascribed to them therein. The term "habitual violator" means any resident or nonresident person who, within the immediately preceding five years, has been convicted in this or any other state:

(a) Three or more times of:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto or as prohibited by any ordinance of any city in this state or any law of another state which is in substantial conformity with that statute;

(2) ~~Driving--while-under-the-influence-of-alcohol-or-drugs,~~ as-prohibited-by violating K.S.A. 8-1567 and amendments thereto, ~~or-as-prohibited-by~~ or violating an ordinance of any city in this state or by any law of another state, which ordinance or law declares to be unlawful the acts prohibited by that statute;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262 and amendments thereto or as prohibited by any ordinance of any city in this state or any law of another state which is in substantial conformity with that statute;

(4) perjury resulting from a violation of K.S.A. 8-261a and amendments thereto or resulting from the violation of a law of another state which is in substantial conformity with that

statute;

(5) violating the provisions of the fifth clause of K.S.A. 8-142 and amendments thereto, relating to fraudulent applications, or violating the provisions of a law of another state which is in substantial conformity with that statute;

(6) any crime punishable as a felony, if a motor vehicle was used in the perpetration of the crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602 ~~to 8-1604~~, inclusive through 8-1604, and amendments thereto, or required by any ordinance of any city in this state or a law of another state which is in substantial conformity with those statutes; or

(8) violating the provisions of K.S.A. 40-3104 and amendments thereto, relating to motor vehicle liability insurance coverage or an ordinance of any city in this state, which is in substantial conformity with such statute.

(b) Three or more times, either singly or in combination, of any of the offenses enumerated in subsection (a) ~~of this section~~.

For the purpose of ~~part (a)(2) of this section~~ subsection (a)(2), in addition to the definition of "conviction" otherwise provided by law, conviction includes, but is not limited to, a diversion agreement entered into in lieu of further criminal proceedings, or a plea of nolo contendere, on a complaint, indictment, information, citation or notice to appear alleging a violation of K.S.A. 8-1567 and amendments thereto or an ordinance of a city in this state or law of another state, which ordinance or law prohibits the acts prohibited by that statute.

Sec. 3. K.S.A. 8-1001 is hereby amended to read as follows:
8-1001. (a) Any person who operates, attempts to operate or is in physical control of a motor vehicle ~~upon a public highway in this state shall be~~ within this state is deemed to have given consent, subject to the provisions of this act, to submit to a ~~chemical test of breath or blood, to determine the alcoholic content of the person's blood whenever~~ test or tests of the

person's blood, breath, urine or other bodily substance to determine the alcohol or drug concentration thereof. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) The test or tests deemed consented to under subsection (a) may be administered at the direction of a law enforcement officer who has reasonable grounds to believe the person was operating, attempting to operate or in physical control of a motor vehicle while under the influence of alcohol or drugs, or both, and one of the following conditions exists: (1) The person is has been arrested or otherwise taken into custody for any offense involving operating operation or control of a motor vehicle under the influence of alcohol or drugs, or both, in violation of a state statute or a city ordinance and the arresting-officer-has-reasonable-grounds-to-believe-that-prior-to arrest-the-person-was-driving-under-the-influence-of-alcohol; or (2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury or death.

The test or tests shall be administered at the direction of the arresting a law enforcement officer.

~~(b)~~ (c) If a law enforcement officer requests ~~the-arrested~~ a person to submit to a chemical test of blood or urine under this section, the withdrawal of blood or collection of the urine sample at the direction of the officer may be performed only by: (1) a person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician. No person authorized by this subsection to withdraw blood or collect a urine sample, nor any person assisting in the performance of a blood ~~alcohol~~ or urine test or any hospital where blood is withdrawn or tested, or urine is collected and tested, that has been directed by any law enforcement officer to withdraw or test blood, or collect or test urine, shall be liable in any civil or criminal action when the

act is performed in a reasonable manner according to generally accepted medical practices in the community where performed.

(d) No law enforcement officer who is acting pursuant to this section shall be liable in any civil or criminal proceeding involving the action.

(e) -- If the person so arrested refuses a request to submit to a test of breath or blood, it shall not be given and the person's refusal to submit to the test shall be admissible in evidence against the person at any trial for driving under the influence of alcohol. The arresting officer shall make a report verified on oath to the division of vehicles of the refusal, stating that prior to the arrest the officer had reasonable grounds to believe that the person was driving under the influence of alcohol. Upon receipt of the report, the division immediately shall notify the person of the right to be heard on the issue of reasonableness of the failure to submit to the test. If, within 20 days after such notice is mailed, the person makes a written request for a hearing, the division shall hold a hearing in the county where the alleged violation occurred, or in a county adjacent thereto, within the time and in the manner prescribed by K.S.A. 8-255 and amendments thereto. Notice of the time, date and place of hearing shall be given to the person by restricted mail, as defined by K.S.A. 60-103. If a hearing is not requested or if, after the hearing, the division finds that the refusal was not reasonable, and after due consideration of the record of motor vehicle offenses of the person, the division shall suspend the person's license or permit to drive or nonresident operating privilege for a period of not less than 120 days and not more than one year.

(e) (1) If a test or tests are requested under this section and the person refuses to submit thereto, the person shall be given oral and written notice that: (A) There is no right to consult with an attorney regarding whether to submit to testing; (B) refusal to submit to testing will result in six months' suspension of the person's driver's license; and (C) refusal to

submit to testing may be used against the person at any trial on a charge involving driving while under the influence of alcohol or drugs, or both. After giving the foregoing information, a law enforcement officer shall again request the person to submit to the test or tests. The selection of the test or tests shall be made by the officer. If the person refuses to take and complete a test as requested, additional testing shall not be given and the person's driver's license shall be subject to suspension as provided in K.S.A. 8-1002 and amendments thereto. The person's refusal shall be admissible in evidence against the person at any trial arising out of the alleged operation, attempted operation or physical control of a motor vehicle while under the influence of alcohol or drugs, or both.

(2) Any person who submits to testing under this section shall be given, upon completion of testing, written notice that:
(A) The results of the testing may be used against the person at any trial on a charge involving driving while under the influence of alcohol or drugs, or both; and (B) the person has the right to consult with an attorney and may secure additional testing at the person's own expense, which, if desired, should be done as soon as possible and is customarily available from hospitals, medical laboratories and physicians.

(3) It shall not be a defense to any prosecution for a violation of K.S.A. 8-1567 and amendments thereto, or to any other action arising out of the alleged operation, attempted operation or physical control of a motor vehicle while under the influence of alcohol or drugs, or both, that the person did not understand the written or oral notice required by this section because of any condition produced by the person's voluntary intoxication or by injury resulting from that intoxication.

(f) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant. A search warrant permitting alcohol or drug concentration testing may be issued only upon a showing that a law enforcement officer has

probable cause to believe the person was operating a motor vehicle while under the influence of alcohol or drugs and the motor vehicle was involved in an accident resulting in death or serious personal injury likely to result in death.

(g) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be delivered to such person.

Sec. 4. K.S.A. 8-1002 is hereby amended to read as follows:
8-1002. ~~Upon the request of any person submitting to a chemical test under this act, a report of the test shall be delivered to such person.~~ (a) If a person refuses to complete a test or tests in accordance with this act, the person's driver's license shall be suspended for six months, subject to the provisions of this section. The law enforcement officer directing the administration of the testing shall serve notice of driver's license suspension on the person. Such service shall be made in person by the officer on behalf of the division of vehicles of the department of revenue and shall contain the following information: (1) The person's name, driver's license number and current address; (2) the reason and statutory grounds for the suspension; (3) the effective date of the suspension; (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing and obtain an extension of the temporary license and a stay of the order of suspension. The notice of suspension shall also inform the person that all correspondence will be mailed to the person at the address contained in the notice of suspension unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248 and amendments thereto if the address furnished is different from that on file with the division.

(b) After serving notice as provided by subsection (a), the officer shall take any license of the person and, if the license is not expired, suspended, revoked or canceled, issue a temporary

license effective for only 15 days. A temporary license issued pursuant to this subsection shall bear the same restrictions and limitations as the license for which it was exchanged. The officer shall also provide the person with a copy of the officer's certification as set forth in subsection (c). Within three days of the refusal, the officer who effected service shall forward the officer's certification and a copy of the notice of suspension, along with any licenses taken, to the division.

(c) (1) The law enforcement officer's certification required by this section shall be signed by one or more law enforcement officers to certify that: (A) There existed reasonable grounds to believe the person was operating, attempting to operate or in physical control of a motor vehicle while under the influence of alcohol or drugs, or both, and the person had been placed under arrest, was in custody or had been involved in a motor vehicle accident or collision; (B) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001 and amendments thereto and; (C) the person refused to submit to or complete testing as requested.

(2) Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B misdemeanor.

(d) Upon receipt of the law enforcement officer's certification, the division shall proceed to suspend the person's driving privileges in accordance with the notice of suspension previously served. If, within 10 days after notice was served, the person mails a written request for a hearing, the division shall stay action on the suspension, extend the temporary license for 45 days beyond the date of the written request and schedule a hearing in the county where the alleged violation occurred, or in a county adjacent thereto, within the time and in the manner prescribed by K.S.A. 8-255 and amendments thereto. Notice of the time, date and place of hearing shall be mailed, along with the extension of the temporary license, to the person in accordance

with subsection (f). If a hearing cannot be held within 45 days, the division shall reschedule the hearing to the next hearing date available and extend the temporary license for the appropriate period. The scope of the hearing shall be limited to whether: (1) a law enforcement officer had reasonable grounds to believe the person was operating, attempting to operate or in physical control of a motor vehicle while under the influence of alcohol or drugs, or both; (2) the person was in custody or arrested for an alcohol or drug related offense or was involved in a motor vehicle accident or collision resulting in property damage, personal injury or death; (3) at the time of the request for a test the law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001 and amendments thereto; and (4) the person refused to take a test as requested by a law enforcement officer.

(e) If no hearing is requested in writing within 10 days or if the division makes a finding adverse to the person after a hearing, the division shall suspend the person's license, permit to drive or nonresident operating privileges for a minimum period of six months. If the person whose privileges are suspended is a nonresident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence.

(f) All notices affirming or canceling a suspension under this section and all notices of a hearing held under this section shall be sent by first class mail and a U.S. post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing.

(g) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.

New Sec. 5. A law enforcement officer, and the state or any political subdivision of the state that employs a law enforcement officer, arresting or taking custody of a person for any offense involving the operation, attempt to operate or physical control of a motor vehicle while under the influence of alcohol or drugs,

or both, shall have immunity from any civil or criminal liability for the care and custody of the motor vehicle that was being operated by or was in the physical control of the person arrested or in custody if the law enforcement officer acts in good faith and exercises due care.

Sec. 6. K.S.A. 8-1004 is hereby amended to read as follows:
8-1004. Without limiting or affecting the provisions of K.S.A. 8-1001 ~~to 8-1003~~ and amendments thereto, the person tested shall have a reasonable opportunity to have an additional chemical test by a physician of ~~his or her~~ the person's own choosing. In case the officer refuses to permit such additional ~~chemical test to be taken, then the original test~~ testing, the testing administered pursuant to K.S.A. 8-1001 and amendments thereto shall not be competent in evidence.

Sec. 7. K.S.A. 8-1005 is hereby amended to read as follows:
8-1005. (a) In any criminal prosecution for violation of the laws of this state relating to ~~driving~~ operating, attempting to operate or physical control of a motor vehicle while under the influence of alcohol, ~~or a combination of alcohol and any drug~~ or drugs, or both, or the commission of vehicular homicide or manslaughter while under the influence of alcohol, ~~or a combination of alcohol and any drug~~ or drugs, or both, or in any prosecution for a violation of a city ordinance relating to the ~~driving~~ operation, attempted operation or physical control of a motor vehicle while under the influence of alcohol, ~~or a combination of alcohol and any drug~~ or drugs, or both, evidence of the ~~amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of~~ concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following presumptions:

(1) If ~~there was at that time less than .10% by weight of alcohol in the defendant's blood, such~~ the alcohol concentration is less than .10, that fact may be considered with other competent evidence to determine if the defendant was under the

influence of ~~a combination of alcohol and any drug~~; alcohol, or both alcohol and drugs.

(2) ~~If there was at the time .10% or more by weight of alcohol in the defendant's blood~~ the alcohol concentration is .10 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol to a degree that renders the person incapable of driving safely.

(3) If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapable of safely driving a vehicle, that fact may be considered to determine if the defendant was under the influence of drugs, or both alcohol and drugs, to a degree that renders the defendant incapable of driving safely.

(b) For the purpose of this section, ~~percent by weight of alcohol shall be based upon grams of alcohol per 100 milliliters of blood~~ act, "alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(c) A certificate, signed and sworn to, by a chemist of the Kansas department of health and environment or other state agency, which contains the results of an analysis made by such chemist of the alcohol concentration of the defendant's blood shall be admissible as evidence and shall be prima facie evidence of the alcohol concentration of the defendant's blood.

Sec. 8. K.S.A. 8-1006 is hereby amended to read as follows: 8-1006. The foregoing provisions of K.S.A. 8-1005 and amendments thereto shall not be construed as limiting the introduction of any other competent evidence, including alcohol concentration tests obtained more than two hours after the defendant was arrested or taken into custody, bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor alcohol or drugs, or both.

Sec. 9. K.S.A. 1984 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate, attempt to

operate or be in physical control of any vehicle within this state while:

(1) The alcohol concentration in the person's blood or breath is .10 or more, as measured from samples taken within two hours after the person operated, attempted to operate or was in physical control of the vehicle;

(2) under the influence of alcohol;

(3) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(4) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate, attempt to operate or be in physical control of any vehicle within this state if the person is a habitual user of ~~or under the influence of~~ any narcotic, hypnotic, somnifacient or stimulating drug ~~or is under the influence of any other drug to a degree which renders such person incapable of safely driving a vehicle. The fact that any~~

(c) If a person is charged with a violation of this subsection involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against ~~any charge of violating this subsection~~ the charge.

~~(e)~~ (d) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 48 hours' nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$200 nor more than \$500. The person convicted must serve at least 48 hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which (1) suspends the person's driver's license for a period of one year or, in lieu thereof, suspends the person's driver's license for

30 days or until the person completes any educational and treatment programs required by the court, whichever is longer, and thereafter places restrictions on the person's driver's license, as provided in K.S.A. 1984 Supp. 8-292 and amendments thereto, for the remainder of the one-year period; and (2) requires that the person enroll in and successfully complete an alcohol and drug safety action program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both the education and treatment programs. ~~if the person convicted has a suspended or revoked driver's license, the court shall not make the restricted license, provided under this subsection, applicable until the suspension or revocation is terminated. No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this subsection or the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 22-2906 et seq. and amendments thereto, shall not constitute plea bargaining.~~

(d) (e) On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days' nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least five days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008 and amendments thereto. In addition, the court shall suspend enter an order which suspends the driver's license of the convicted person for a period of one year or, in lieu thereof, suspends the person's driver's license for 120 days or until the

person completes the treatment program approved by the court, whichever is directed by the court. ~~No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this subsection or the ordinance~~ longer, and thereafter places restrictions on the person's driver's license, as provided in K.S.A. 1984 Supp. 8-292 and amendments thereto, for the remainder of the one-year period.

{e} (f) On the third or subsequent conviction of a violation of this section, a person shall be sentenced to not less than 90 days' nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008 and amendments thereto. In addition, the court shall revoke the driver's license of the convicted person for the period of time specified for the revocation of a driver's license under subsection {j} (k) and in accordance with the procedure for revoking a driver's license under subsection {k} (1). ~~No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this subsection or the ordinance.~~

{f} (g) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be

required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

~~(g)~~ (h) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

~~(h)~~ (i) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

~~(i)~~ (j) For the purpose of determining whether a conviction is a first, second or, third or subsequent conviction in sentencing under this section, the term "conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section. For such purpose "conviction" also includes being convicted of a violation of a law of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance. For the purpose of determining whether a conviction is

a first, second or, third or subsequent conviction in sentencing under this section, only convictions occurring in the immediately preceding five years, including prior to the effective date of this act, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable.

~~(j)~~ (k) In addition to any fine or imprisonment imposed under this section and in lieu of any restrictions on or suspension of a driver's license under this section, the judge of any court in which any person is convicted of violating this section or of violating any municipal ordinance which prohibits the acts prohibited by this section may revoke the person's driver's license or privilege to operate a motor vehicle on the public highways of this state. Whenever a license or privilege to operate a motor vehicle is revoked pursuant to this section, the person whose license or privilege has been revoked shall not be entitled to have such license or privilege restored until the expiration of one year from the date of revocation. On conviction of a third or subsequent violation of this section, revocation pursuant to this subsection shall be mandatory for a period set by the court at not less than one year.

~~(k)~~ (1) Upon suspending or revoking any license pursuant to this section, the court shall require that such license be surrendered to the court. The court shall transmit the license to the division to be retained by the division until further order of the court. Whenever the court restores the privilege to operate a motor vehicle on the public highways of this state to any person whose license was suspended or revoked pursuant to this section, the court shall notify the division, and if the person has successfully completed the examination required by K.S.A. 8-241 and amendments thereto, and the other conditions established by law have been met, the division shall issue the appropriate license to the person upon proper application and payment of the required fee.

(i) (m) Nothing contained in this section shall be construed as preventing any city from enacting ordinances declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city and prescribing penalties for violation thereof, but the minimum penalty and license suspension and restriction in any such ordinance shall not be less than nor exceed the minimum penalty and license suspension and restriction prescribed by this act for the same violation, nor shall the maximum penalty and license suspension and restriction in any such ordinance exceed the maximum penalty and license suspension and restriction prescribed for the same violation.

(n) If a person is convicted under this section or under a city ordinance declaring acts prohibited or made unlawful by this act as unlawful or prohibited in the city and already has a suspended or revoked driver's license, any period of license suspension or revocation under this section shall not begin until the prior period of suspension or revocation has elapsed.

(o) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

(p) The alternatives set out in subsections (a)(1) and (2) may be pleaded in the alternative, and the state or city may, but shall not be required to, elect one of the two prior to submission of the case to the fact finder.

Sec. 10. K.S.A. 1984 Supp. 12-4305 is hereby amended to read as follows: 12-4305. The municipal judge shall establish a schedule of fines which shall be imposed for municipal ordinance violations that are classified as ordinance traffic infractions.

Also, the municipal judge may establish a schedule of fines which shall be imposed for the violation of certain other ordinances. Such fines shall be imposed upon a voluntary entry of appearance and upon a plea of guilty or no contest to a complaint alleging such violation. Any fine so established shall be within the minimum and maximum allowable fines established by ordinance for such offenses by the governing body. The following traffic violations are specifically excluded from any schedule of fines:

- (a) Reckless driving;
- (b) driving while under the influence of ~~intoxicating~~ liquor alcohol or drugs, or both, or driving with a blood or breath alcohol concentration of .10 or more;
- (c) driving without a valid license issued or on a suspended or revoked license; or
- (d) offenses arising from a motor vehicle collision or accident.

The municipal judge may authorize the clerk of the municipal court or some other person to accept such voluntary appearance by mail or in person, plea of guilty or no contest and payment of the fine imposed by the schedule. Payment may be made by mail or in person and may be by personal check. The complaint shall not have been complied with if a check is not honored for any reason, or the fine is not paid in full prior to the time specified in the notice to appear. When a person charged with an ordinance traffic infraction or other ordinance violation on a schedule of fines makes payment by mail without executing a written waiver of right to trial and plea of guilty or no contest, the payment shall be deemed such an appearance, waiver of right to trial. and plea of no contest.

The schedule of fines and persons authorized to accept such pleas shall be conspicuously displayed in the office where such voluntary appearance, plea of guilty and payment of fine occurs.

Sec. 11. K.S.A. 12-4415 is hereby amended to read as follows: 12-4415. (a) In determining whether diversion of a defendant is in the interests of justice and of benefit to the

defendant and the community, the city attorney shall consider at least the following factors among all factors considered:

(1) The nature of the crime charged and the circumstances surrounding it;

(2) any special characteristics or circumstances of the defendant;

(3) whether the defendant is a first-time offender of an alcohol related offense and if the defendant has previously participated in diversion, according to the certification of the division of vehicles of the state department of revenue;

(4) whether there is a probability that the defendant will cooperate with and benefit from diversion;

(5) whether the available diversion program is appropriate to the needs of the defendant;

(6) the impact of the diversion of the defendant upon the community;

(7) recommendations, if any, of the involved law enforcement agency;

(8) recommendations, if any, of the victim;

(9) provisions for restitution; and

(10) any mitigating circumstances.

(b) A city attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of an alcohol related offense if the defendant:

(1) Has previously participated in diversion of an alcohol related offense or;

(2) has previously been convicted of or plead pleaded nolo contendere to a violation of an alcohol related offense in this state;

(3) at the time of the alleged alcohol related offense had an alcohol concentration of .15 or more in the defendant's blood or breath; or

(4) during the time of the alleged alcohol related offense was involved in a motor vehicle accident or collision resulting

in personal injury or death.

Sec. 12. K.S.A. 12-4416 is hereby amended to read as follows: 12-4416. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the city attorney, the city attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and the right to trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the municipal court with which the agreement is filed.

(b) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement shall include a stipulation, agreed to by the defendant and the city attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay the minimum fine equal to that required a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, consonant with K.S.A. 8-1567, and amendments thereto; and

(2) enroll in and successfully complete an alcohol and drug safety action program as provided in K.S.A. 8-1008 or a treatment program, or both, as provided in K.S.A. 8-1008 and amendments thereto, or both such education and treatment programs, as and specified by the agreement, and pay the assessment required by K.S.A. 8-1008 and amendments thereto.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement may restrict the defendant's privilege of operating a motor vehicle to driving only under the following circumstances: (1) In going to or returning from the person's place of employment or schooling; (2) in the course of the person's employment; (3) during a medical emergency; (4) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go to attend an alcohol and drug safety action program as provided in K.S.A. 8-1008 and amendments thereto; (5) at such times of the day as may be specified by the diversion agreement; and (6) to such places as may be specified by the diversion agreement. Restrictions imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

Upon entering a diversion agreement restricting a person's license under this subsection, the city attorney shall require that the license be surrendered to the city attorney. The city attorney shall transmit the license to the division of vehicles of the department of revenue, together with a copy of the diversion agreement. Upon its receipt, the division of vehicles shall issue without charge a driver's license which shall

indicate on the face of the license that restrictions have been imposed on the person's privilege of operating a motor vehicle and that a certified copy of the diversion agreement imposing the restrictions is required to be carried by the person for whom the license was issued any time the person is operating a motor vehicle on the highways of this state. If the person is a nonresident, the city attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence. The city attorney shall furnish to any person whose driver's license has had restrictions imposed on it under this subsection a copy of the diversion agreement, which for a period of 30 days only shall be recognized as a valid Kansas driver's license pending issuance of the restricted license as provided in this subsection.

Upon expiration of the period of time for which restrictions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior to expiration. Violation of restrictions imposed under this subsection is a misdemeanor subject to punishment and driver's license suspension as provided by K.S.A. 1984 Supp. 8-291 and amendments thereto.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement may suspend or revoke the defendant's privilege of operating a motor vehicle on the public highways of this state. Suspension or revocation imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

Upon entering a diversion agreement suspending or revoking any license pursuant to this subsection, the city attorney shall require that such license be surrendered to the city attorney. The city attorney shall transmit the license to the division to be retained by the division.

Upon expiration of the period of time for which suspension or revocation is imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been otherwise suspended or revoked prior to expiration.

(e) If the city attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the municipal court and the municipal court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the municipal court shall resume the criminal proceedings on the complaint.

Sec. 13. K.S.A. 12-4516 is hereby amended to read as follows: 12-4516. (a) Except as provided in subsection (b), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction if three or more years have elapsed since the person:

(1) Satisfied the sentence imposed; or
(2) was discharged from probation, parole or a suspended sentence.

(b) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, parole or a suspended

sentence, if such person was convicted of the violation of a city ordinance which would also constitute:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto;

(2) ~~driving--while--under--the--influence--of--intoxicating liquor--or--drugs,--as--prohibited--by~~ a violation of K.S.A. 8-1567 and amendments thereto;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been cancelled, suspended or revoked, as prohibited by K.S.A. 8-262 and amendments thereto;

(4) perjury resulting from a violation of K.S.A. 8-261a and amendments thereto;

(5) a violation of the provisions of the fifth clause of K.S.A. 8-142 and amendments thereto, relating to fraudulent applications;

(6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604 and amendments thereto;

(8) ~~violating~~ a violation of the provisions of K.S.A. 40-3104 and amendments thereto, relating to motor vehicle liability insurance coverage.

(c) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than the defendant's current name; (3) the defendant's sex, race, and date of birth; (4) the crime for which the defendant was convicted; (5) the date of the defendant's conviction; and (6) the identity of the convicting court. A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have

relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas adult authority.

(d) At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds:

(1) That the petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) that the circumstances and behavior of the petitioner warrant the expungement; and

(3) that the expungement is consistent with the public welfare.

(e) When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the federal bureau of investigation, the Kansas bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the conviction occurred if asked about previous convictions (A) in any application for employment as a detective with a private detective agency, as defined by K.S.A. 1982--Supp. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 1982-Supp. 75-7b01 and amendments thereto; with a criminal justice agency, as defined by K.S.A. 22-4701 and amendments thereto; or with an institution, as defined in K.S.A. 1982-Supp. 76-12a01 and amendments thereto, of

the department of social and rehabilitation services; or (B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed; and

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged.

(f) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such a violation or is placed on parole or probation or is given a suspended sentence for such a violation, the person shall be informed of the ability to expunge the conviction.

(g) Subject to the disclosures required pursuant to subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of an offense has been expunged under this statute may state that such person has never been convicted of such offense.

(h) Whenever the record of any conviction has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or

a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 1982--Supp. 76-12a01 and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense; or

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged.

Sec. 14. K.S.A. 1984 Supp. 21-3405a is hereby amended to read as follows: 21-3405a. (1) Aggravated vehicular homicide is the unintentional killing of a human being, without malice while ~~engaged-in-reckless-driving-in-violation--of--K.S.A.--8-1566--and amendments--thereto,--driving--under--the-influence-of-alcohol-or drugs-in-violation-of-K.S.A.-8-1567--and--amendments--thereto--or fleeing--or--attempting-to-elude-a-police-officer-in-violation-of K.S.A.,~~ which is done while committing a violation of K.S.A. 8-1566, 8-1567 or 8-1568, and amendments thereto, or the ordinance of a city which prohibits any of the acts prohibited by ~~such-three~~ those statutes.

(2) This section shall be applicable only when the death of the injured person ensues within one year as a proximate result of the operation of a vehicle in the manner described in subsection (1).

(3) Aggravated vehicular homicide is a class E felony.

Sec. 15. K.S.A. 1984 Supp. 21-4619 is hereby amended to

read as follows: 21-4619. (a) Except as provided in subsection (b), any person convicted in this state of a traffic infraction, misdemeanor or a class D or E felony may petition the convicting court for the expungement of such conviction if three or more years have elapsed since the person: (1) Satisfied the sentence imposed; or (2) was discharged from probation, parole, conditional release or a suspended sentence.

(b) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with said that statute;

(2) ~~driving--while--under--the--influence--of--intoxicating liquor--or--drugs,--as--prohibited--by~~ a violation of K.S.A. 8-1567 and amendments thereto, or ~~as--prohibited--by~~ a violation of any law of another state, which law declares to be unlawful the act acts prohibited by said that statute;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been cancelled, suspended or revoked, as prohibited by K.S.A. 8-262 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with said that statute;

(4) perjury resulting from a violation of K.S.A. 8-261a and amendments thereto or resulting from the violation of a law of another state which is in substantial conformity with said that statute;

(5) violating the provisions of the fifth clause of K.S.A. 8-142 and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with said that statute;

(6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with said those statutes; or

(8) violating the provisions of K.S.A. 40-3104 and amendments thereto, relating to motor vehicle liability insurance coverage.

(c) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime for which the defendant was convicted; (5) the date of the defendant's conviction; and (6) the identity of the convicting court. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas adult authority.

(d) At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds that:

(1) ~~That~~ The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) ~~that~~ the circumstances and behavior of the petitioner warrant the expungement; and

(3) ~~that~~ the expungement is consistent with the public welfare.

(e) When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a

certified copy of the order of expungement to the federal bureau of investigation, the Kansas bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the conviction occurred if asked about previous convictions (A) in any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; with a criminal justice agency, as defined by K.S.A. 22-4701 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services; or (B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(f) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime or is placed on parole or probation or is given a suspended sentence or conditional

release, the person shall be informed of the ability to expunge the conviction.

(g) Subject to the disclosures required pursuant to subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged under this statute may state that such person has never been convicted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

(h) Whenever the record of any conviction has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with

a prosecution of an offense that requires a prior conviction as one of the elements of such offense; or

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged.

Sec. 16. K.S.A. 1984 Supp. 22-2908 is hereby amended to read as follows: 22-2908. (1) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county or district attorney shall consider at least the following factors among all factors considered:

(a) The nature of the crime charged and the circumstances surrounding it;

(b) any special characteristics or circumstances of the defendant;

(c) whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the division of vehicles of the state department of revenue;

(d) whether there is a probability that the defendant will cooperate with and benefit from diversion;

(e) whether the available diversion program is appropriate to the needs of the defendant;

(f) the impact of the diversion of the defendant upon the community;

(g) recommendations, if any, of the involved law enforcement agency;

(h) recommendations, if any, of the victim;

(i) provisions for restitution; and

(j) any mitigating circumstances.

(2) A county or district attorney shall not enter into a

diversion agreement in lieu of further criminal proceedings on a complaint if:

(a) The complaint alleges a violation of K.S.A. 8-1567 and amendments thereto and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute or; (B) has previously been convicted of or plead ~~pleaded~~ nolo contendere to a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (C) at the time of the alleged violation had an alcohol concentration of .15 or more in the defendant's blood or breath; or (D) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death; or

(b) the complaint alleges that the defendant committed a class A or B felony.

Sec. 17. K.S.A. 1984 Supp. 22-2909 is hereby amended to read as follows: 22-2909. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the county or district attorney, the county or district attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the right to trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.

(b) The diversion agreement shall state: (1) The

defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant and the county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay the--minimum-fine-required a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567 and amendments thereto for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567 and amendments thereto; and

(2) enroll in and successfully complete an alcohol and drug safety action program as-provided-in-K.S.A.-8-1008 or a treatment program, or both, as provided in K.S.A. 8-1008,--or--both--such education--and-treatment-programs,--as and amendments thereto, and specified by the agreement, and pay the assessment required by K.S.A. 8-1008 and amendments thereto.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement may restrict the defendant's privilege of operating a motor vehicle to driving only under the following circumstances: (1) In going to or

returning from the person's place of employment or schooling; (2) in the course of the person's employment; (3) during a medical emergency; (4) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go to attend an alcohol and drug safety action program as provided in K.S.A. 8-1008 and amendments thereto; (5) at such times of the day as may be specified by the diversion agreement; and (6) to such places as may be specified by the diversion agreement. Restrictions imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

Upon entering a diversion agreement restricting a person's license under this subsection, the county or district attorney shall require that the license be surrendered to the county or district attorney. The county or district attorney shall transmit the license to the division of vehicles of the department of revenue, together with a copy of the diversion agreement. Upon its receipt, the division of vehicles shall issue without charge a driver's license which shall indicate on the face of the license that restrictions have been imposed on the person's privilege of operating a motor vehicle and that a certified copy of the diversion agreement imposing the restrictions is required to be carried by the person for whom the license was issued any time the person is operating a motor vehicle on the highways of this state. If the person is a nonresident, the county or district attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence. The county or district attorney shall furnish to any person whose driver's license has had restrictions imposed on it under this subsection a copy of the diversion agreement, which for a period of 30 days only shall be recognized as a valid Kansas driver's license pending issuance of the restricted license as provided in this subsection.

Upon expiration of the period of time for which restrictions

are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior to expiration. Violation of restrictions imposed under this subsection is a misdemeanor subject to punishment and driver's license suspension as provided by K.S.A. 1984 Supp. 8-291 and amendments thereto.

(e) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement may suspend or revoke the defendant's privilege of operating a motor vehicle on the public highways of this state. Suspension or revocation imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

Upon entering a diversion agreement suspending or revoking any license pursuant to this subsection, the county or district attorney shall require that such license be surrendered to the county or district attorney. The county or district attorney shall transmit the license to the division to be retained by the division.

Upon expiration of the period of time for which suspension or revocation is imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been otherwise suspended or revoked prior to expiration.

(f) If the county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

Sec. 18. K.S.A. 1984 Supp. 40-3118 is hereby amended to read as follows: 40-3118. (a) No motor vehicle shall be registered or reregistered in this state unless the owner at the time of registration, has in effect a policy of motor vehicle liability insurance covering such motor vehicle, as provided in this act, or is a self-insurer thereof. As used in this section, the term "financial security" shall mean and include such policy or self-insurance. The director shall require that the owner certify that the owner has such financial security, and the owner of each motor vehicle registered in this state shall maintain financial security continuously throughout the period of registration. When an owner certifies that such financial security is a motor vehicle liability insurance policy meeting the requirements of this act, the director may require that the owner or owner's insurance company produce records to prove the fact that such insurance was in effect at the time the vehicle was registered and has been maintained continuously from that date. Failure to produce such records shall be prima facie evidence that no financial security exists with regard to the vehicle concerned. It shall be the duty of insurance companies, upon the request of the director, to notify the director within 30 calendar days of the date of the receipt of such request by the director of any insurance that was not in effect on the date of registration and maintained continuously from that date.

(b) Except as otherwise provided in K.S.A. 40-276, 40-276a and 40-277, and any amendments thereto, and except for termination of insurance resulting from nonpayment of premium or

upon the request for cancellation by the insured, no motor vehicle liability insurance policy, or any renewal thereof, shall be terminated by cancellation or failure to renew by the insurer until at least 30 days after mailing a notice of termination, by certified or registered mail or United States post office certificate of mailing, to the named insured at the latest address filed with the insurer by or on behalf of the insured. Time of the effective date and hour of termination stated in the notice shall become the end of the policy period. Every such notice of termination sent to the insured for any cause whatsoever shall include on the face of the notice a statement that financial security for every motor vehicle covered by the policy is required to be maintained continuously throughout the registration period, that the operation of any such motor vehicle without maintaining continuous financial security therefor is a class B misdemeanor and that the registration for any such motor vehicle for which continuous financial security is not provided is subject to suspension and the driver's license of the owner thereof is subject to suspension.

(c) The director of vehicles shall verify a sufficient number of insurance certifications each calendar year as the director deems necessary to insure compliance with the provisions of this act. The owner or owner's insurance company shall verify the accuracy of any owner's certification upon request, as provided in subsection (a) ~~of this section~~.

(d) In addition to any other requirements of this act, the director shall require a person to acquire insurance and for such person's insurance company to maintain on file with the division evidence of such insurance for a period of three years from the date such person's driving privileges are otherwise eligible to be reinstated after such person has been convicted in this or another state of any of the following violations:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto, or as prohibited by any ordinance of any city in this state or any law of another state which is in substantial

conformity with that statute;

(2) ~~driving while under the influence of alcohol or drugs,~~
~~as prohibited by~~ violating K.S.A. 8-1567 and amendments thereto,
or ~~as prohibited by~~ violating an ordinance of any city in this
state or by any law of another state, which ordinance or law
declares to be unlawful the acts prohibited by that statute;

(3) driving while the privilege to operate a motor vehicle
on the public highways of this state has been canceled, suspended
or revoked, as prohibited by K.S.A. 8-262 and amendments thereto,
or as prohibited by any ordinance of any city in this state or
any law of another state which is in substantial conformity with
that statute;

(4) any crime punishable as a felony, if a motor vehicle
was used in the perpetration of the crime;

(5) failing to stop at the scene of an accident and perform
the duties required by K.S.A. 8-1602 ~~to 8-1604,~~ inclusive through
8-1604, and amendments thereto, or required by any ordinance of
any city in this state or a law of another state which is in
substantial conformity with those statutes; and

(6) violating the provisions of K.S.A. 40-3104 and
amendments thereto, relating to motor vehicle liability insurance
coverage or an ordinance of any city in this state which is in
substantial conformity with such statute.

The director shall also require any driver whose driving
privileges have been suspended pursuant to this section or K.S.A.
40-3104 and amendments thereto, to maintain such evidence of
insurance as required above.

The company of the insured shall immediately mail notice to
the director whenever any policy required by this subsection to
be on file with the division is terminated by the insured or the
insurer for any reason. The receipt by the director of such
termination shall be prima facie evidence that no financial
security exists with regard to the person concerned.

For the purposes of this act, the term "conviction" includes
pleading guilty or nolo contendere, being convicted or being

found guilty of any violation enumerated in this subsection without regard to whether sentence was suspended or probation granted. A forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. Also entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of the offense described in paragraph (2) of this subsection (d) shall constitute a conviction for the purpose of this act.

The requirements of this subsection shall apply whether or not such person owns a motor vehicle.

(e) Whenever the director shall receive prima facie evidence, as prescribed by this section, that continuous financial security covering any motor vehicle registered in this state is not in effect, the director shall notify the owner by registered or certified mail or United States post office certificate of mailing that, at the end of 30 days after the notice is mailed, the registration for such motor vehicle and the driving privileges of the owner of the vehicle shall be suspended, pursuant to such rules and regulations as the secretary of revenue shall adopt, unless: (1) Within the thirty-day period, such owner shall demonstrate proof of continuous financial security covering such vehicle to the satisfaction of the director; or (2) within the thirty-day period such owner shall request a hearing with the director. Upon receipt of a timely request for a hearing, the director shall afford such person an opportunity for hearing within the time and in the manner provided in K.S.A. 8-255, and amendments thereto. If, within the thirty-day period or at the hearing, such owner is unable to demonstrate proof of continuous financial security covering the motor vehicle in question, the director shall suspend the registration of such motor vehicle and the driving privileges of the owner of the vehicle, unless the failure is due to a cause beyond the reasonable control of the owner upon proof deemed satisfactory by the director.

(f) Whenever the registration of a motor vehicle or the driving privileges of the owner of the vehicle are suspended for failure of the owner to maintain continuous financial security, such suspension shall remain in effect until satisfactory proof of insurance has been filed with the director as required by subsection (d) and a reinstatement fee in the amount herein prescribed is paid to the division of vehicles. Such reinstatement fee shall be in the amount of \$25 except that if the registration of a motor vehicle of any owner is suspended within one year following a prior suspension of the registration of a motor vehicle of such owner under the provisions of this act such fee shall be in the amount of \$75. The division of vehicles shall, at least monthly, deposit such fees with the state treasurer, who shall credit such moneys to the state highway fund.

(g) In no case shall any motor vehicle, the registration of which has been suspended for failure to have continuous financial security, be reregistered in the name of the owner thereof, the owner's spouse, parent or child or any member of the same household, until the owner complies with subsection (f). In the event the registration plate has expired, no new plate shall be issued until the motor vehicle owner complies with the reinstatement requirements as required by this act.

(h) Evidence that an owner of a motor vehicle, registered or required to be registered in this state, has operated or permitted such motor vehicle to be operated in this state without having in force and effect the financial security required by this act for such vehicle, together with proof of records of the division of vehicles indicating that the owner did not have such financial security, shall be prima facie evidence that the owner did at the time and place alleged, operate or permit such motor vehicle to be operated without having in full force and effect financial security required by the provisions of this act.

(i) Any owner of a motor vehicle registered or required to be registered in this state who shall make a false certification

concerning financial security for the operation of such motor vehicle as required by this act, shall be guilty of a class B misdemeanor. Any person, firm or corporation giving false information to the director concerning another's financial security for the operation of a motor vehicle registered or required to be registered in this state, knowing or having reason to believe that such information is false, shall be guilty of a class B misdemeanor.

(j) The director shall administer and enforce the provisions of this act relating to the registration of motor vehicles, and the secretary of revenue shall adopt such rules and regulations as may be necessary for its administration.

(k) Whenever any person has made application for insurance coverage and such applicant has submitted payment or partial payment with such application, the insurance company, if payment accompanied the application, ~~shall upon declination of~~ and if insurance coverage, is denied, shall refund the unearned portion of the payment to the applicant or agent with the notice of denial of coverage. If payment did not accompany the application to the insurance company but was made to the agent, the agent shall refund the unearned portion of the payment to the applicant upon receipt of the company's notice of denial.

(l) For the purpose of this act, "declination of insurance coverage" means a final denial, in whole or in part, by an insurance company or agent of requested insurance coverage.

Sec. 19. K.S.A. 8-285, 8-1001, 8-1002, 8-1004, 8-1005, 8-1006, 12-4415, 12-4416 and 12-4516 and K.S.A. 1984 Supp. 8-262, 8-1567, 12-4305, 21-3405a, 21-4619, 22-2908, 22-2909 and 40-3118 are hereby repealed.

Sec. 20. This act shall take effect and be in force from and after its publication in the statute book.

I am with the KANSAS Coalition for Drug Free Driving.

My name is Donna Bolek, I live and operate an antique shop in Riley, Kansas. I am a mother and a grandmother.

Last spring June 5, 1984 my husband and I were on our way into Manhattan to an auction, when we came upon a terrible wreck, I said "oh God it's our girls" and it was. A Drunk Driver had crashed into the car containing my daughter in-law and my youngest daughter Lola Bolek Tucker. Lola died 90 min. later in the emergency room.

I know of no way to express to you how we felt at that time. I read when Jesus was crucified his mother Mary said a hundred arrows pierced her heart and I know of no better way to explain our feelings. Lola was 23 years old, she had two small children, Miranda age 14 months and Donald age 2 years 5 months. We loved them all very much.

The driver of the other car was not hurt, he had a blood alcohol content of .32 he was charged with second degree murder, DUI, driving left of center, transporting an open container and driving on a suspended drivers license. He had used fraud to obtain a Kansas drivers license and he carried no car insurance. This was his 6th alcohol related conviction.

I feel the drunk/drugged driver should be made to accept the responsibility of their actions. To see a loved one die in this manner is the most unjust, senseless and unnecessary cause of death there is.

When someone chooses to drink to the point that they have no regard for another human life, it is murder.

Some people feel it is your constitutional right to drink if you choose to and I will not argue this point, but it is not their constitutional right to drive. That is a privilage allotted to you by the state of Kansas.

My daughter was to young to die, but I speak not only for her but for everyone that has lost a loved one in this manner, as it will continue to happen unless we get better laws against the drunk/drugged driver.

I might add that the second degree murder charge was reduced to involuntary manslaughter and thru plea bargaining this was the only thing he was charged with. February 11th he was sentenced to 3 to 10 years. I wish I could have my daughter back in 3 to 10 years.

I feel that if Bill 2201 had been in effect at the time time, this tragedy and many others like it may have been prevented.

I would like to thank you for allowing me to speak here today, and tell you that our coalition thinks the sub-committee headed by chairperson Van Crum did an excellant job, and we give our full support to this bill.

*2/26/85
Attach c*

Kansas Coalition for Drug-Free Driving

P.O. Box 133 Wichita, Ks. 67201 316-265-6601

TESTIMONY FROM BRIDGET HAYES

Co-chair of the Kansas Coalition for Drug-Free Driving

February 26, 1985

I am Bridget Hayes the Vice President of the Wichita chapter of RID (Remove Intoxicated Drivers) and co-chair of the Kansas Coalition for Drug-Free Driving. The Coalition represents RID & MADD (Mothers Against Drunk Driving) chapters from several communities across the state and also gains support from the Kansas Women for Highway Safety, the Kansas PTA, the Association of the Kansas Coordinators of the Alcohol Safety Action Project and the Insurance Women of Wichita. These groups have united to support drunk driving legislation that focuses on strengthening our current DUI law while emphasizing deterrents and enforceability. The Coalition is highly committed to this effort, and to this revised bill before you now.

The Coalition is keenly aware of how other states are dealing with the drunk driving problem. When the Kansas DUI law is compared to that of other states, most other states including the surrounding four appear to have stronger DUI laws. Our recommendations are based on the experience of other states and what is working for them. The subcommittee, chaired by Representative Vancrum, has also done a lot of research for this bill and they are to be commended for their work on it. The Coalition is extremely satisfied with the bill. The subcommittee obviously has put much time and thought into the revisions and as a result they have come up with a major piece of legislation which addresses the weaknesses in our current law.

One of the most important parts of the bill is the inclusion of "per se" which would make a BAC of .10% or above proof of legal intoxication. Forty-two (42) other states already have a "per se" law.

The Coalition is dissatisfied with the leniency given first-time offenders. A minimum mandatory 30-day suspension for the first conviction is definitely a step in the right direction. We are somewhat concerned about the length of the suspension and 30 days is the minimum we could support. The Coalition is glad to see restriction of the driver's license eliminated because it was unenforceable and therefore not effective. A true suspension of a license, on the other hand, has proven to be a most effective deterrent in dealing with the DUI offender.

2/26/85
Attach. D

The inconsistent use of diversion across Kansas is of particular concern to us. Some jurisdictions have 100% diversion rate, while others have 100% conviction rate for first-time offenders. Statewide, 50% of all DUI offenders enter diversion programs. For these people there is no jail time, no driving restrictions and no insurance increases. Diversion is not even considered a conviction unless the offender is arrested again. The fact is, most of the people who kill (85%-90%) have not been previously arrested. If we're not dealing with the first-time offender, we're not dealing with the drunk driving problem. The Coalition strongly supports the addition of the guidelines for diversion.

The subcommittee is recommending other significant changes in our law which the Coalition also supports. The subcommittee has done an exceptional job in dealing with this most serious issue and the Coalition congratulates them for a job well done and thanks them for remembering that the innocent people killed and injured by the drunk driver are the real victims.

The Coalition believes this legislation is very important to Kansans, who are all potential victims of the drunk driver. We are highly motivated to see this bill leave your committee, go through the process to become a law and strengthen our current DUI law.

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

Testimony on DUI Bills

February 26, 1985

Mr. Chairman, Members of the Committee, my name is Gene Johnson and I represent the KS Community Alcohol Safety Action Project Coordinators Association. Our membership totals 28 Alcohol Safety Action Projects located throughout the state. We provide all courts in the state of Kansas with the alcohol and drug evaluations for all DWI offenders whether they are granted diversion or are convicted of a DWI offense. For the most part we also provide the Alcohol Information School for those offenders who are directed to us by the district, county, and city attorneys, and also those offenders who are directed to us by the sentencing court.

We support the Subcommittee's report on the DUI legislation as presented to the full Committee today. Our ultimate aim is to reduce alcohol related crashes throughout the state and to provide education and the needed rehabilitation of those persons diverted or convicted of a DUI offense. This legislation would be a step closer to that ultimate goal.

We would like to have one condition added to the restrictions on the diversions. On Page 19, add a Condition 5 - "if a person refuses to submit to a test or tests of blood, breath, urine, or other bodily substance to determine the alcohol or drug concentration thereof." Again, on Page 33

Attach E

Page 2
House Federal and State Affairs Committee
February 26, 1985

we would like to add a restriction or condition as Condition E, "If a person refuses to submit to a test or tests of blood, breath, urine, or other bodily substances to determine the alcohol or drug concentration therein." These conditions would disallow any diversion agreements granted by the prosecuting attorney for those offenders who refuse the arresting officer's request to submit to any type of a chemical test to determine the alcohol and drug concentration in their blood stream. We feel that these people have violated their privilege to drive and should not be given the privilege of applying for the diversion program.

We find under this law that the number of diversions throughout the state will be reduced substantially due to the guidelines set forth on Page 19 and Page 33 of this law. We can no longer tolerate those offenders who make it a practice of drinking excessively and then operating a motor vehicle on our roads.

I will answer any questions for the Committee.

Respectfully submitted,



Gene Johnson, Chairman
KS Community ASAP Coordinators Assn.

Tavern League of Kansas

719 Massachusetts
Lawrence, Kansas 66044
(913) 841-8470

3330 Randolph
Topeka, Kansas 66611
(913) 267-2514

Christopher S. Edmonds
Executive Director

PREPARED STATEMENT OF

CHRISTOPHER S. EDMONDS
EXECUTIVE DIRECTOR
TAVERN LEAGUE OF KANSAS

BEFORE THE KANSAS HOUSE OF REPRESENTATIVES
FEDERAL AND STATE AFFAIRS COMMITTEE

ROBERT H. MILLER, CHAIRPERSON

IN REGARDS TO:

SUBSTITUTE MEASURE

DRIVING UNDER THE INFLUENCE

FEBRUARY 26, 1985
1:30 pm

2/26/85
Attach F.

Chairman Miller, members of the House of Representative Committee on Federal and State Affairs, I would like to take this chance to thank you for the opportunity to speak with you on legislation that would strengthen the "Driving Under the Influence" statutes in the State of Kansas. I am Christopher S. Edmonds, Executive Director of the Tavern League of Kansas. The League represents on-premise cereal malt beverage retailers in Kansas.

The number one priority of the Tavern League of Kansas is to promote responsible decisions with regard to alcohol consumption and use in the State of Kansas. "Drunks" are not good for business and we do not wish to condone excessive drinking. MODERATION and RESPONSIBILITY are the most important words in a member's vocabulary.

To illustrate this concept, let me cite several examples of industry action in this area:

LAWRENCE, KANSAS: Members of the Tavern League of Kansas have sponsored bus and taxi services to allow people who have had a "bit too much" to travel to their destination safely.

KANSAS CITY, KANSAS: Taverns and Private Clubs have begun to publicize the punishments for driving under the influence in Kansas with posters and promotions of non-alcoholic beverages.

MANHATTAN, KANSAS: Manhattan taverns and clubs have started a new group against drunk driving, B.A.D.D. -- BARTENDERS AGAINST DRUNK DRIVING. Such a group sponsors taxis and bus service as well as server education programs.

WICHITA, KANSAS: "Friends don't let Friends Drive Drunk" is the name of a program that is beginning to be seen in the Wichita area. This program calls upon bartenders and others to keep a "watch out" for intoxicated persons and confiscate keys and dissuade patrons from driving after a night of drinking.

SALINA, KANSAS: The newest member of this network is working on a designated driver program. This would keep one member of a "party" from drinking and he would be the designated driver.

All of these programs are being developed into a comprehensive "curriculum" to address the issues of RESPONSIBILITY AND MODERATION.

Similarly, the Tavern League of Kansas is developing a server education seminar to be presented to all members of the industry on a voluntary basis to increase awareness of all servers and owners as to the laws and responsibilities of each member of the industry in preventing drunk driving and irresponsible consumption.

An increase in the penalties for driving under the influence is an important step in the move to stop the death and carnage on our roads and bridges by drivers of all ages. We support any measures that would serve as a deterrent to drunk driving. State after state has seen the largest reduction in drunk driving and alcohol related fatalities as a result of tougher drunk driving laws. The Department of Transportation and the President's Commission on Drunk Driving both indicated the best ways to reduce the number of accidents related to alcohol were to educate the citizenry on responsible alcohol use and abuse and to crack down on drunk driving through tougher laws and statutes across the nation.

We support the actions of the subcommittee and commend both the subcommittee and the Department of Revenue on their sincere efforts to crack down on the drunk driver.

We would ask that it be made explicitly clear, in any legislation dealing with this matter, that tests for other substances also be conducted. In a recent study conducted by the National Institute on Alcohol and Drug Abuse at Brown University, it was found that 60 percent of those surveyed indicated that drugs, other than alcohol, played a contributing role in their driving impairment. Such testing is an important part of creating a safer environment on the roads for all Kansans. Similarly, the penalties for such a violation should be equal or stronger than those for driving under the influence of alcohol.

Again, Mr. Chairman, thank you very much. I would be happy to answer any questions at this time.

Charles Hamm.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Testimony on H.B. 2268

Presented to the House Committee on Federal and State Affairs

This is the official position taken by the Kansas Department of Health and Environment on H.B. 2268.

Strong public interest in removing the drinking driver from Kansas highways has resulted in the enactment of tough DUI laws and a significant increase in the number of court cases prosecuted under these statutes. Similarly, the number of court subpoenas received by Kansas Department of Health and Environment chemists have increased nearly two hundred percent over the past five years.

At the present time, about two thousand five hundred blood specimens are analyzed for alcohol content by the state public health laboratory each year. An average of fifteen subpoenas are received each week for the purpose of introducing test results into court evidence. Many subpoenas are for conflicting times and places. This usually requires rescheduling and delay of court proceedings. Moreover, after responding to subpoena, no chemist testimony is presented in sixty-five percent of appearances due to defendant stipulation, guilty plea or agreement for diversionary program. A significant amount of time, effort, and expensive as well as additional requests for laboratory staff positions could be avoided if a certified copy of the test results were considered prima facie evidence of blood alcohol level.

Most importantly, the adoption of this bill would permit prompt resolution of routine cases in which technical testimony by the analytical chemist is not required. Similar legislation which has been

*2/26/85
Attach 6*

in place for several years in the Commonwealth of Massachusetts has effectively streamlined judicial handling of DUI cases in that state.

Department's Position:

The Kansas Department of Health and Environment supports this bill.

Presented by:

Barbara J. Sabol, Secretary
Kansas Department of Health
and Environment



THOMAS E. KELLY
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

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ROBERT T. STEPHAN
ATTORNEY GENERAL

M E M O R A N D U M

TO: Thomas E. Kelly, Director

FROM: Timothy P. Rohrig, Ph..D. *TR*
Toxicology Section

DATE: February 26, 1985

RE: DRUGS AND DRIVING

It is generally recognized that many drugs (including ethanol) can impair driving ability and thus potentially contribute to accidents. Most early research and epidemiological studies involved ethanol alone and its relationship to the impairment of driving skills. The role of ethanol as a significant factor in traffic arrests, accidents and fatalities has been established through numerous studies. The increasing use and abuse of drugs, in addition to ethanol, has raised the question of their ability to impair driving performance.

Several studies have demonstrated a high incidence of drugs in "intoxicated drivers" by questioning or urine analysis. Finkle et al reported that 21% of arrested, drinking drivers indicated on routine questioning some kind of concurrent drug use. In a recent study² of people arrested for impaired driving, sedative-hypnotic drugs were found in 30 to 50% of the bloods tested. These studies, although informative, only provide information on the incidence of drug use with concurrent abuse of ethanol.

Several recent studies have investigated the effect of psychoactive drugs alone and in combination with ethanol on driving performance. The endpoints of these studies have been either single vehicle fatalities or driving under the influence arrests.

¹ Finkle, B.S. et al
"The Occurrence of Some Drugs and Toxic Agents Encountered
in Drinking Driver Investigations"
JFS 13:236-245 (1968)

² White, J.M. et al
"Testing for Sedative-Hypnotic Drugs in the Impaired
Driver: A Survey of 7,000 Arrests"
Clin. Tox. 18:945-95

2/26/85
Attach H.

SINGLE VEHICLE FATALIES

A study³ in Dallas County, Texas, of 127 fatally injured drivers revealed that 70% were positive for alcohol or drugs. Of these, ethanol alone was detected in 52%, other drugs in 9% and both drugs and alcohol in another 9%. Thus, drugs were present in 18% of all drivers and ethanol in 61%. Furthermore, 67% of the drivers determined to be at fault in their respective accidents had alcohol or drugs detected.

A comprehensive drug study was carried out on specimens from drivers and pedestrians fatally injured in Ontario⁴. With respect to drivers, ethanol was found in 57% of the study sample and drugs, other than ethanol, in 26%.

A North Carolina study⁵ involving 600 fatally injured drivers demonstrated a high incidence of ethanol and other drug use. The incidence of detection of ethanol (79.3%) was far greater than the incidences determined for THC^a (7.8%), methaqualone (6.2%) and barbiturates (3.0%).

A 1973 study⁶ by the Midwest Research Institute on specimens from victims of motor vehicle crashes procured from a number of geographic locations has indicated an incidence of positive drug findings of 13.1% in the urine of fatally injured drivers.

DUI ARRESTS

In a recent study² of people arrested for impaired driving, sedative-hypnotic drugs were found in 30-50% of the bloods tested.

A collaborative study⁷ of the California Association of Toxicologists involved 836 DUI arrests over a 2 1/2 year period. The presence of psychoactive drugs other than, or in addition to, ethanol in persons with driving behavior problems was found to be common in California and Nevada.

A single drug was detected in 37% of the DUI arrestees and two or more drugs in 24% of the arrestees. Those psychoactive drugs other than ethanol that were most likely to be identified in a person with a driving behavior problem as shown in this study were a variety of barbiturates, diazepam, methaqualone, chlordiazepoxide, meprobamate and ethchlorvynol. The typical person in this study who was driving with a psychoactive drug present in blood or urine and who experienced a driving problem was a white male under the age of 30.

³ Garriot, J.C. et al
"Incidence of Drugs and Alcohol in Fatally Injured Motor Vehicle Drivers"
JFS 22:383 (1977)

⁴ Cimura, G. et al
"Incidence and Toxicological Aspects of Drugs Detected in 484 Fatally Injured Drivers and Pedestrians in Ontario"
JFS 27:855-867 (1982)

⁵ Mason, A.P.
"Ethanol, Marijuana, and other Drug Use in 600 Drivers Killed in Single-Vehicle Crashes in North Carolina, 1978-1981"
JFS 29:987-1026 (1984)

a) THC: tetrahydrocannabinol, psychoactive ingredient in marijuana

The presence of a detectable psychoactive drug was statistically associated with accidents at a highly significant range in comparison with a control group. The addition of ethanol to another psychoactive drug appears significantly to increase the likelihood of a fatal accident.

In Dallas County, Texas⁸, individuals arrested for driving under the influence were tested for alcohol and drug use, over a two year period. A relatively high incidence of positive toxicologic findings in this study (87.5% drugs or alcohol on both; 72% drugs) suggest that drugs may play a larger role in the intoxicated driver population than previously recognized.

Finally, it must be clearly recognized that detection of any drug (blood or urine) does not necessarily imply contribution of that drug to the fatality or impaired driving. However, when results of a blood alcohol test are lower than the apparent degree of intoxication, a urine drug screen will help substantiate the drug role in the intoxication and/or impaired driving.

⁶ Midwest Research Institute Report
"The Incidence of Drugs in Fatally Injured Drivers"
MRI Project No. 3747C, E.R. Woodhouse, Project Leader
Kansas City, MO 1973

⁷ Lundberg, G.D. et al
"Drugs (other than or in addition to ethyl alcohol) and
Driving Behavior: A Collaborative Study of the
California Association of Toxicologists"
JFS 24:207 (1979)

⁸ Garriott, J.C. et al
"Drug Detection in Cases of 'Driving Under the Influence'"
JFS (1975)